Indiana Hospital, a wholly owned subsidiary of Indiana Health Care Corporation and International Union of Operating Engineers, Local 95-95A, AFL-CIO. Cases 6-CA-24546, 6-CA-24604, 6-CA-24609, 6-CA-24831, 6-CA-24853, and 6-CA-25057-1

November 25, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On January 13, 1994, Administrative Law Judge Leonard M. Wagman issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed limited exceptions and a supporting brief. The Respondent and the General Counsel filed answering briefs, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,³ and conclusions and to adopt the recommended Order.

In an opinion dated November 26, 1993, the court denied enforcement of the Board's Order and remanded the case to the Board for further proceedings. 10 F.3d 151 (1993). The Board accepted the court's remand and, on May 11, 1994, ordered a hearing before an administrative law judge on the issues remanded by the court. The judge issued his supplemental decision on August 11, 1994, reaffirming the prior finding of an 8(a)(5) violation, and on September 22, 1994, in the absence of any exceptions, the Board adopted the judge's findings and conclusions.

²No exceptions were filed to the judge's dismissal of the allegation that the Respondent violated Sec. 8(a)(5) and (1) of the Act by changing the job description of the position of lead groundskeeper and by changing its policy regarding the release of information to employees.

³The General Counsel and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) of the Act by discriminatorily forbidding nonpower-house employees from taking their lunch or other breaks in its powerhouse building, we find it unnecessary to rely on the judge's dis-

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Indiana Hospital, a wholly owned subsidiary of Indiana Health Care Corporation, Indiana, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

cussion of a regulation under the Occupational Safety and Health Act.

Stephanie E. Brown, Esq., for the General Counsel.

James B. Brown, Esq. (Cohn & Grigsby), of Pittsburgh, Pennsylvania, for the Respondent.

Timothy P. O'Reilly, Esq. (O'Brien, O'Reilly & Finkel), of Pittsburgh, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LEONARD M. WAGMAN, Administrative Law Judge. This case was tried at Indiana, Pennsylvania, on March 16–17 and April 19–20, 1993.¹ The charge in Case 6–CA–24546 was filed May 12, in Case 6–CA–24604 on June 5 (amended July 2), in Case 6–CA–24609 on June 8, in Case 6–CA–24831 on August 28 (amended October 16), in Case 6–CA–24853 on September 4 (amended October 16), and in Case 6–CA–25057–1 on November 18. A complaint consolidating all the enumerated cases was issued January 26, 1993.

The consolidated complaint alleged that the Respondent, Indiana Hospital, a wholly owned subsidiary of Indiana Health Care Corporation² (the Hospital), had violated Section 8(a)(3) and (1) of the National Labor Relations Act (29 U.S.C § 151 et seq.) by changing the work schedules of its maintenance employees, changing the work schedules of its employees Charles P. Huston and Thomas G. Shaffer, prohibiting its employees from taking lunch and breaks in its powerhouse, by issuing an evaluation to employee David Smith criticizing his attitude and work record, and by issuing a verbal warning to Smith.

The consolidated complaint also alleged that the Hospital by unilaterally changing the work schedules, prohibiting its employees from taking lunch and breaks in the powerhouse, unilaterally changing the job description of its lead groundskeeper, unilaterally changing its policy regarding assignment of snow removal duties, and unilaterally changing its policy regarding the submission of information requests, all at a time when it had a duty to bargain with the Union about these matters, and by refusing to furnish information requested by the Union, the Hospital violated Section 8(a)(5) and (1) of the Act. The Hospital has answered, denying commission of the alleged unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Hospital, I make the following

¹ On February 8, 1993, the Board issued an unpublished Decision and Order in Case 6–CA–24965 finding that by refusing to bargain with the Union, certified in Case 6–RC–10615 on September 30, 1992, the Respondent had engaged and was engaging in unfair labor practices within the meaning of Sec. 8(a)(5) and (1) of the Act. Subsequently, the Respondent filed a petition for review of the Board's Order with the United States Court of Appeals for the Third Circuit, and the Board filed a cross-application for enforcement.

¹ All dates are in 1992 unless otherwise indicated.

² The Respondent's name appears as corrected at the hearing.

FINDINGS OF FACT

I. JURISDICTION

The Hospital, a Pennsylvania corporation with office and place of business at Indiana, Pennsylvania, has been and is engaged as a health care institution in the operation of an acute care hospital providing inpatient and outpatient medical and professional services for the public. During the 12-month period ending April 30, the Hospital in conducting it business operations derived gross revenues exceeding \$250,000. During the same 12-month period, the Hospital in conducting its business operations purchased and received at its Indiana, Pennsylvania facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. The Hospital admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues

On September 19, 1991, the Union won a Board-held election in the following appropriate unit of the Hospital's maintenance employees by a margin of 17 to 3:

All full-time and regular part-time skilled maintenance employees, including biomedical technicians, operating engineers, lead operating engineer, carpenters, electricians, painters, plumbers, HVAC mechanics, maintenance mechanics, preventive maintenance employees, lead groundskeeper, parts room clerk and engineering and maintenance department secretary employed by the [Hospital] at its facility located in Indiana, Pennsylvania; excluding all business office clerical employees, all technical employees and guards, professional employees and supervisors as defined in the Act and all other employees.

On September 26, 1991, the Hospital filed timely objections to conduct affecting the results of the election. On October 31, 1991, the Regional Director for Region 6 issued a supplemental decision on objections recommending that all of the Hospital's objections be overruled. On September 30, the Board certified the Union as the collective-bargaining representative of maintenance unit described above.

On October 31, 1991, the Union, by letter, notified the Hospital that it was ready to begin negotiations for a contract covering the unit described above, and asked for a meeting. The Hospital rejected the request and asserted its intent to "exhaust all of its rights under the National Labor Relations Act." A union letter dated April 7, addressed to the Hospital's president, Donald D. Sandoval, requesting a meeting with a hospital representative, elicited a rejection letter, dated August 13, from the Hospital's counsel. Counsel's ground for rejecting the Union's request was "the absence of a valid certification."

On December 1, the General Counsel issued a complaint in Case 6–CA–24965, alleging that since October 14, the Union had requested the Hospital to bargain, and that the Hospital had refused. The Hospital answered, admitting some, and denying other, allegations in the complaint. The

General Counsel filed a Motion for Summary Judgment. The Board granted the motion in *Indiana Hospital*, 310 NLRB No. 50 (Feb. 8, 1993) (not reported in Board volumes), finding that the Hospital's refusal to bargain violated Section 8(a)(5) and (1) of the Act.³

The issues presented include whether the Hospital, in reaction to the bargaining unit's selection of the Union as their collective-bargaining representative by a vote of 17 to 3, violated Section 8(a)(3) and (1) of the Act by:

- 1. Issuing an evaluation to David Smith which criticized his attitude and performance.
 - 2. Issuing a verbal warning to David Smith.
 - 3. Changing its maintenance employees' work schedules.
- 4. Changing Charles P. Huston's and Thomas G. Shaffer Sr.'s work schedules.
- 5. Prohibiting its maintenance employees from taking lunch and breaks in its powerhouse.

Further issues presented in these case are whether the Hospital, by the following unilateral conduct, violated Section 8(a)(5) and (1) of the Act:

- 1. Changing the job description of the lead groundskeeper's position.
- 2. Changing its policy regarding the submission of information requests.
- 3. Changing its policy regarding assignment of snow removal duties.
 - 4. Changing the maintenance employees' work schedules.
- 5. Changing Charles P. Huston's and Thomas G. Shaffer's respective work schedules.
- 6. Prohibiting its maintenance employees from taking lunch and breaks in its powerhouse.

The final issue presented is whether the Hospital violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with requested information relevant to the Union's duties as the collective-bargaining representative of the employees in the bargaining unit.

B. The Alleged Discrimination Against David Smith

David Smith, the Hospital's lead operating engineer, has been in its employ for 6 years. At all times material to this case, Smith worked under the supervision of Daniel J. Severin, the Hospital's director of facilities. In his testimony before me, Severin conceded that Smith was a good employee and that he never had any problem with the quality of Smith's work. Severin flatly asserted, on direct examination that "Mr. Smith was and is a very good employee." In the course of further direct examination, Severin extolled the

³ On November 26, 1993, the United States Court of Appeals for the Third Circuit denied enforcement of the Board's Decision and Order, and remanded the case to the Board for further proceedings. To this date, the Board has not disturbed the certification. However, on December 6, 1993, I received counsel for the General Counsel's motion to hold these cases in abeyance pending the disposition of the underlying representation proceeding, Neither the Hospital nor the Union have responded to this motion.

Having considered the motion, noting that the certification remains extant, and after considering the possibility that I may retire or become incapacitated during the pendency of the proceedings before the Board, I have decided to deny the motion and issue my decision in these cases. By this action, I seek to expedite these cases and protect the parties from the expense of a new trial before another administrative law judge.

quality of Smith's job performance "over the years" testifying that: "His evaluations have always been, and continue to be good."

Smith was an active union supporter in the campaign leading up to the election on September 19, 1991. In November 1991, the bargaining unit employees elected Smith as their shop steward. On November 21, 1991, the Union, by letter, advised the Hospital that David Smith was the bargaining unit's shop steward. However, the General Counsel's only witness regarding the matter, Union Representative James F. Carpenter, conceded on cross-examination that the Hospital never indicated that it had received this letter. Nor did he have any independent recollection of either having mailed the letter or of advice from anyone that it was mailed to the Hospital. David Smith received a carbon copy of the letter by mail, from the Union. For its part, the Hospital presented no testimony showing that it had not received this letter.

Although the record may not show that it ever received the Union's letter announcing Smith's election as shop steward, the Hospital and Severin had been aware since September 19, 1991, that an overwhelming majority of the bargaining unit, which included Smith, had voted for the Union. Indeed, on cross-examination, Severin admitted that he was aware of the election and its results in September 1991.

On April 10, the Pennsylvania Department of Environmental Resources (DER) unexpectedly inspected Severin's waste-burning procedure. DER found that Severin was burning red bags containing 100-percent infectious waste instead of a 50-50 mixture of infectious and noninfectious waste, as required under the license it had issued to the Hospital. DER cited the Hospital for violation of the latter's burning permit. The unexpected appearance of DER annoyed Severin to the point that he complained to his employees.

In mid-May, Severin, in a conversation with Smith, expressed anger at the recent DER inspection and at an inspection by the Federal Occupational Safety and Health Administration (OSHA). Severin believed that an individual had called those agencies. Smith assured him that the Union had made the calls. Severin rejected Smith's assertion, insisting that the informer was an employee. Complaining angrily that he was under a microscope, Severin warned that all of his maintenance employees would also be under a microscope. He also said that if he could, he would change all of their work schedules.⁴

On June 23, Smith received his 1992 evaluation from Severin. At this juncture, Smith, for the first time, identified himself to Severin as the Union's shop steward for the bargaining unit. The evaluation showed that in performance of his principal responsibilities and pursuit of specific goals, Smith exceeded the Hospital's standards. Indeed, Severin indicated on the evaluation that Smith's general traits, job application, overall planning and relationship with subordinates, all exceeded the Hospital's standards. However, in the "comments" section of the evaluation, Severin wrote:

Dave needs to work to maintain a positive attitude and try not to allow outside influences to effect his good record and working relationships. At the time he discussed this evaluation with Smith, Severin neglected to explain what he meant by outside influences. Nor did Severin advise Smith to keep other maintenance department employees from distracting him from his own work. However, before me, Severin offered the following explanation of the comment:

Dave is such a good employee and a good coordinator that many of the people from other areas of the department were going to get him to assist them with their work and what I attempted to do here, since Dave was such a good employee, was to tell him you can't be all things to all people, you have to concentrate on your job first and let other people do their own work in order to maintain your good record.

When asked if he considered the comment on Smith's evaluation to be negative, Severin testified: "No I didn't even consider it as criticism, I considered it as a caution to him that to continue to do the excellent work you have been doing, you must make sure that you concentrate on your work first and not someone else's."

I asked Severin to explain what he meant by "maintain a positive attitude" and he responded: "Okay, it was my feeling that if the man was trying to do not only his job, but somebody else's job it couldn't help but drag his work down and cause him to lose the positive attitude that he maintained in his work."

Once again, the Hospital's counsel, asked Severin whether his written comment was negative. Severin answered: "There was no negative comment. He had exceeded standards in all areas on this." On further direct examination, Severin pointed out his other laudatory comments elsewhere in the 1992 evaluation.

The Hospital's counsel asked Severin how his praise squared with the allegedly critical comment. Severin answered: "Well, like I say he was a good worker and he had a good positive attitude and I wanted to make sure that he stayed that way."

The General Counsel urges a finding that by including a critical comment regarding Smith's attitude and work record, the Hospital was rebuking him because he supported the Union, and thereby violated Section 8(a)(3) and (1) of the Act. The Hospital argues that comment of which the General Counsel complains was not unlawful because it was not a negative comment. Smith testified that he considered Severin's comment to be negative. I find ample factual support for the General Counsel's contention.

Section 8(a)(3) of the Act prohibits employer "discrimination in regard to tenure of employment or any term or condition of employment to discourage membership in any labor organization." It is well settled that an employer violates Section 8(a)(3) and (1) of the Act by taking adverse personnel actions against employees, or by downgrading their evaluations because they support unionization. *NLRB v. Tamper, Inc.*, 522 F.2d 781, 787–788 (4th Cir. 1975); *NLRB v. Amber Delivery Services*, 651 F.2d 57, 68–69 (1st Cir. 1981); *Circuit-Wise, Inc.*, 306 NLRB 766 (1992).

To establish such a violation here, the General Counsel was required to make a prima facie showing sufficient to sustain the inference that union activity was a motivating factor in the Hospital's inclusion of the alleged adverse comment in Smith's 1992 evaluation. If the General Counsel sat-

⁴I based my findings regarding the mid-May conversation between Severin and Smith, on the latter's uncontradicted testimony.

isfied that requirement, the inclusion of that comment, assuming it was negative, must be found unlawful unless the Hospital has shown, as an affirmative defense, that it would have placed that comment in his evaluation even in the absence of his union activity. *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 402–403 (1983), affg. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

If the record shows that the work-related reason advanced by the Hospital was pretextual—that is, that the reason either did not exist or was not in fact relied on—it necessarily follows that the Hospital has not met its burden and the inquiry is logically at an end. Wright Line, 251 NLRB at 1084. Applying this formula, I am satisfied that the Hospital has resorted to a pretext in its effort to discourage Smith from engaging in activity on the Union's behalf.

Contrary to the Hospital's position, I find that Severin's comment, suggesting that an "outside influence" is eroding Smith's "positive attitude" and threatening his "good record and working relationships," was negative. The message in Severin's comment amounts to a warning. The phrase "Dave needs to work to maintain a positive attitude" suggests either that on one or more occasions in 1992, Smith did not have a positive attitude, or that the writer perceives some factor which may have a harmful impact on Smith's positive attitude. The remaining language, "and try not to allow outside influences to affect his good record and working relationships" suggests either that on one or more occasions during the evaluation period, some "outside influence" detracted from his work performance or harmed his relationships with fellow employees or with one or more supervisors, or that the writer fears that some factor outside the workplace may have that effect in the future.

According to Severin, Smith "was trying to do not only his job, but somebody else's" and that conduct "couldn't help but drag his work down and cause him to lose the positive attitude that he maintained in his work." Counsel for the General Counsel argues that the records shows that Smith's union activity provoked Severin to write the negative comment

There can be little doubt that Smith was an active union supporter. In 1991, prior to the representation election, Smith campaigned for the Union. He visited fellow employees at their homes and solicited their support. The Union won the election on September 19, 1991, by a count of 17 to 3. The bargaining unit employees elected him their shop steward, 2 months after the election. At the time he wrote the comment in Smith's 1992 evaluation, Severin was aware of the Union's victory, and he knew that the vote had been 17 to 3. Against this backdrop, Severin's reference to "outside influences" strongly suggested that he used those two words as code for "the Union." I find therefore, that at the time he wrote the critical comment, Severin was probably aware that Smith was a union activist. However, I find that Severin was at least worried that Smith would support the Union.

In an effort to explain what he meant by outside influences, Severin testified that by outside influences, he was referring to "people from our department." According to Severin's further testimony, Smith was helping these people with their work. When counsel for the General Counsel reminded him that these people were "not outside the department," Severin answered that they were "outside of

[Smith's] area." In sum, employees asking leadman Smith for help in performing the work of the Hospital's maintenance department were the outside influences. Thus, according to the Hospital and Severin, employees, who work in the maintenance department, but are located beyond an undefined space designated as Smith's area, are outside influences. Looking at common usage, I find it difficult to believe that Severin truly considered his own employees to be outside influences. This distorted explanation of Severin's meaning, when he used outside influences, evidenced an effort to camouflage his real intention.

I also find that Severin's asserted fear, that Smith was helping other employees, excessively has not been borne out by record evidence. Thus, aside from Severin's assertions in his testimony, the Hospital has not shown either the frequency of such conduct or the effect of such conduct by Smith on either his performance, his attitude, or on his relationships with other hospital employees.

In sum, I find that Severin's resort to a distorted explanation of what he meant by outside influences left the General Counsel's prima facie case unrebutted. Moreover, by resorting to such a contrivance, Severin bolstered the General Counsel's showing that the quoted phrase meant "the Union." Severin's rejected explanation impaired his credibility enough to compel me to reject his denial that union activity had anything to do with the comment in Smith's 1992 evaluation. Severin's unsubstantiated fear, that Smith was helping other employees excessively, dealt the final blow to the Hospital's explanation. Accordingly, I find that when he placed the critical comment in Smith's 1992 evaluation, Severin discriminated against Smith with the hope that he would abandon the Union. I further find therefore, that by this conduct, the Hospital violated Section 8(a)(3) and (1) of the Act.

In late August, Dave Smith approached the Hospital's assistant director of facilities, Norman Thiel, and began to discuss the Union's request for information. Smith asked if Thiel could get in touch with the Hospital's vice president, Dominic Paccapaniccia, and find out when the information would be forthcoming. Later, that same day, Smith confronted Thiel and pressed him about the Union's information request. Thiel said he had not contacted the vice president, who was probably very busy, and that Smith would receive the information when the management was ready to give it. Smith complained that the Hospital was stalling and threatened to file an unfair labor practice charge with the Board. Theil suggested that Smith carry out his threat, adding that the Hospital would be happy to hear from him. Theil also said he would report Smith's announced intention to the Hospital's chief executive officer.

On September 2, Smith worked the day shift in the Hospital's powerhouse. His shift ended, at 3:30 p.m. Smith punched the timeclock at approximately 3:40 p.m., and walked through the powerhouse, on his way to his parked automobile. He came on steam blowing out of a valve, on which he had just finished working with the afternoon shift engineer, Joe Yagle. Smith saw this as "basically an emergency situation," and decided to help Yagle.

Smith concluded that the situation was too much for Yagle to manage alone. There was a safety hazard. The steam was under 120 pounds of pressure at 340 degrees fahrenheit. Further, if Smith and Yagle could not isolate or shut down the

malfunctioning valve, they would be obliged to shut down the Hospital's boilers. This last step would have left the Hospital without any steam. Yagle also believed that he needed assistance and that the Hospital's steam supply was in jeopardy. There was a general maintenance employee assigned to the afternoon shift, but he was not present in the powerhouse. Yagle did not know where the general maintenance employee was. When Smith offered to help, Yagle quickly accepted.

Smith and Yagle, working together, alleviated the threat to the Hospital's steam supply and the danger posed by the malfunctioning valve. By the time they had resolved the problem so that Yagle could safely return to work by himself, 15 to 20 minutes had elapsed and it was now approximately 4 p.m.

As Smith prepared to leave the powerhouse, a supervisor, Assistant Director of Facilities Norman Thiel, arrived. He asked what Smith was doing and asserted that Smith was not on authorized overtime. Smith replied that he was not worried about getting overtime. He explained the emergency, asserting that Yagle had needed help. On the night of September 2, Thiel did not discuss Smith's unauthorized overtime, with Yagle. Indeed, on and after that date, neither Thiel, nor Severin, nor any other member of the Hospital's management, spoke to Yagle about the events of September 2.5

On the following morning, Thiel reported Smith's unauthorized overtime work to Severin. Thiel did not provide details other than to report that he had seen Dave Smith "working down in the powerhouse after regular quitting time." No one ever told Severin about the faulty valve or about the threat to the Hospital's steam supply, which had caused Smith to remain at work on September 2, after having punched out. Severin did not investigate the circumstances surrounding Smith's decision on September 2 to work in the powerhouse, after having punched out.⁶

Later, on September 3, at Severin's direction, Thiel issued a verbal warning to Smith for "working without being punched in." The warning also reported that "Dave [Smith] was instructed he cannot be in any part of the hospital unless visiting a patient or punched in."

The Hospital's employee handbook, which has been in effect since 1990, provides that a reprimand or warning will ordinarily serve as discipline for an employee who has performed "unauthorized and unnecessary overtime." In addition, the employee handbook includes the following:

REPORTING FOR WORK

All employees may report onto the Hospital's premises fifteen (15) minutes prior to their scheduled starting time and must depart the premises within fifteen (15) minutes following the end of their scheduled work shift

. . . .

Employees are permitted to enter the Hospital or to remain on the premises only if they are on duty, scheduled to work, visiting a patient, waiting for transportation, eating a meal prior to the start of their shift, or otherwise requested to report by Administration.

The employee handbook declares that "overtime must be authorized by the Department Manager or Supervisor prior to the end of the shift." The same handbook also states that the Hospital "has the right to schedule employees to work overtime when the needs of the Hospital make such requirements necessary."

On March 30, Severin issued a memorandum to "All Engineering & Maintenance Employees" regarding overtime and shift schedule changes. In his testimony before me, Severin explained that this memorandum was "just a reinforcement of the existing policy and a better explanation to the employees of how to mark and manage their time on the timecard." This memorandum did not contain any warning of discipline. Severin viewed the proper marking of timecards as a means of both controlling the number of hours worked by his employees and of making certain that employees are paid as required by Federal wage and hour regulations.

Despite the Hospital's policy regarding overtime, for the 6 years he has worked in its powerhouse, Smith has worked from 6 a.m. until his shift begins, at 7 a.m., without punching in. During that hour, he confers with night-shift employees and checks over the status of the boilers, chillers, and other powerhouse components, for which he is responsible. There is no evidence that Severin, Thiel, or any other member of the Hospital's management knew of Smith's practice prior to September 3. Indeed, Smith has regularly parked his car some distance from the powerhouse, and walked to it, in an effort to avoid observation by supervision. However, I find from Smith's and Severin's testimony, that, prior to September 3, Severin had verbally warned Smith not to work off the clock.

In March, Severin warned employee Al Winters "that he must punch in and out at the correct time." I find from Severin's testimony that he gave this warning because Winters "had been punching in a couple minutes early on a regular basis."

Smith has also worked off the clock, during his off-duty hours, when on-duty employees have telephoned him with requests for emergency help. On those occasions, Smith went to the Hospital's powerhouse took care of the emergency and returned home, without clocking in or claiming overtime pay. With one significant exception, there was no showing that any member of supervision was aware of any of these episodes.

As lead operating engineer, Smith considers helping in emergencies to be part of his job. Smith's job description and his evaluations for 1991 and 1992 show that one of his responsibilities is to assist the Hospital's engineering and maintenance department "when necessary to protect the safety and welfare of the patient, staff, and facilities."

Prior to the incident on September 2, the Hospital did not discipline Smith for working off the clock in emergency situations. One such incident occurred in 1991, during the afternoon shift, when Smith, although off duty, helped after a transformer had blown up, and the Hospital's electrical supply was threatened. Severin thanked him for his effort. Smith did not seek overtime for this work, and the Hospital did not pay him for it. In his testimony before me, Severing asserted:

⁵My findings regarding Smith's overtime work, and the circumstances under which he performed it, are based on Smith's and Yagle's uncontradicted testimony.

⁶I based my findings regarding Thiel's report and Severin's failure to investigate the incident, on the latter's uncontradicted testimony.

"I would always commend people for coming out either on overtime or on extra time to assist and help us anytime we have an emergency situation."

Counsel for the General Counsel contends that the record shows that the Hospital imposed the verbal warning of September 3 on Smith as punishment for his union activity. The Hospital argues that the record shows that union activity had nothing to do with the verbal warning; that Severin was only enforcing a hospital policy. Applying the Board's doctrine set out in *Wright Line*, 251 NLRB at 1084, I find ample ground for the General Counsel's contention.

In June, Severin showed his hostility toward the Union, when he warned Smith about outside influences in a negative comment, in Smith's annual evaluation. However, on the very day on which Severin showed him his annual evaluation, with its thinly disguised warning about involvement with the Union, Smith defied the warning. He announced to Severin that he, David Smith, was the Union's shop steward. In late August, Smith, acting as shop steward, confronted Severin's assistant, Norman Thiel, and pressed him about some information which the Union was seeking from the Hospital. Thiel's sarcastic retorts suggested that he was at least annoyed by Smith's pressure.

On September 2, a few days after their unfriendly encounter, Thiel and Smith again met at the Hospital. This time, Thiel discovered Smith working off the clock. Thiel, at Severin's direction, 1 day later, issued a written warning to Smith for working off the clock. This warning followed in the wake of Smith's report to Thiel on September 2, that an emergency had required him to assist employee Joe Yagle. Smith was the Hospital's lead operating engineer and had responsibility for assuring its ability to perform its mission. Yet, in the face of his claim that Yagle's situation required an immediate response, which left no time for clocking in, Severin and Thiel decided to discipline Smith. Severin did not investigate Thiel's report and Thiel ignored Smith's explanation. It would seem reasonable to expect that Smith's status as lead operating engineer, and his exemplary work record, both recognized by Severin, would have entitled him to an opportunity to explain his deviation from the Hospital's overtime policy. Instead, Severin and Thiel decided to reprimand Smith.

In assessing support for the General Counsel's prima facie showing, I find a considerable array of evidence. First, I note the haste with which Severin and Thiel acted to discipline Smith, who they knew was the Union's shop steward. Further, I have noted their failure to investigate his alleged misconduct. Also considered, was the union animus exhibited by the two supervisors, i.e., Severin's negative comment in June, and Thiel's response to Smith's request for information in late August. Additional support for the General Counsel's case is found in the timing of the verbal warning, so soon after Smith, acting as the Union's steward, had annoyed Thiel by pressing him for information and threatening to enforce the union request by resort to the Board. In sum, I find that the General Counsel has made a prima facie showing that when the Hospital disciplined Smith on September 3, it was motivated by hostility toward the Union and its supporters and a desire to discourage union activity among the Hospital's employees.

The Hospital argues that it disciplined Smith on September 3 because he violated its policy "in two respects." First, ac-

cording to the Hospital's brief, Smith failed to obtain authorization for the overtime he performed. Further, according to the Hospital's brief, Smith "failed to properly mark his timecard and have his supervisor initial the card as required by the policy." I note that written verbal warning which Thiel issued on September 3 says essentially the same thing. However, the Hospital's employee handbook prescribed discipline for "[p]erformance of unauthorized and unnecessary overtime." Thus, I find that the Hospital's policy required that Smith's overtime be both unauthorized and unnecessary. Yet, in their haste to deal with Smith, Severin and Thiel did not have time to consider whether his overtime work was unnecessary. This neglect suggests that the two supervisors were more interested in finding a pretext for disciplining Smith.

David Smith worked overtime off the clock on September 2, after he saw steam blowing out of a valve. He concluded that this was an emergency requiring immediate action by himself and employee Joe Yagle. Smith saw the escaping steam as "a safety hazard." I also find from his credited testimony that, if he and Yagle had not acted as they did, the Hospital would have lost all of its steam. For, as I find from employee Yagle's undenied testimony, Smith decided to act when only one boiler was functioning. I further find from Smith's and Yagle's convincing testimony that the faulty valve jeopardized the Hospital's capability.

Severin, the Hospital's only witness on the topic, was not present when Smith worked off the clock on September 2. Severin admitted that the changing of a steam trap "could be" an "emergency situation" but added that it "normally" was not. However, the record shows that Thiel only told Severin that Smith had been off the clock, when he helped Yagle change a steam trap on September 2. Severin did not delve into Smith's reasoning for taking that action on September 2. Instead, he checked Smith's timecard, and, finding no entry for the overtime on September 2, corrected it to reflect 1 hour, and thus made certain that Smith would be paid for his overtime. Severin also authorized the written verbal warning which Thiel prepared and signed. However, Severin showed no interest in finding out if Smith had averted a bad situation for the Hospital.

I have found that on September 2, when Assistant Director Thiel caught Smith working off the clock and questioned him, Smith explained that there was an emergency and that Yagle needed help. I based these findings upon Smith's uncontradicted testimony. The source of possible contradiction, Thiel, did not testify. That the Hospital has not explained its failure to call Thiel as a witness, leads me to suspect that his testimony would have supported Smith's testimony in this regard.

Smith had extended himself to avert a serious breakdown in the Hospital's support system. Yet, Thiel did not praise him and make the necessary entries to legitimize Smith's overtime. Instead, he reported to Severin that Smith had worked off the clock, without authorization. Thiel's refusal to acknowledge Smith's effort to protect the Hospital and its patients suggests that Thiel was anxious to find a reason to discipline the employee.

Severin's reaction to Thiel's report evidences a similar attitude toward Smith. Severin testified that he commends employees for working overtime, or extra time, to help the Hospital in emergencies. He also conceded on cross-examination, that in the presence of an emergency, he does not expect an employee to take time to punch in before attacking the problem. Yet, on September 2 and 3, Severin ignored those principles when confronted with Thiel's report that Smith had worked without having punched in at the timeclock. Confronted by a report of misconduct by a valued, and highly praised leadman, who had responsibility for the well-being of the Hospital, Severin did not stop to get an explanation from Smith, the alleged wrongdoer, or from anyone else. Instead, Severin quickly instructed Thiel to discipline Smith. This neglect to find out why Smith had worked off the clock on September indicates that Severin was anxious to use that incident as a pretext for issuing a verbal warning.

The Hospital argued in it brief that its fair dealing with Smith was exemplified by its withholding of disciplinary action when, without authorization, he turned over hospital records to a governmental agency. However, in light of the General Counsel's prima facie showing and the Hospital's failure to rebut that showing, I find no merit in that argument. For, even if the Hospital might have had a valid basis for punishing Smith for releasing its records, I have found that the reason it chose on September 2 and 3 was not the real reason for the written verbal warning which it issued to him on the latter date.

In sum, I find that Severin and Thiel seized on David Smith's failure to punch a timeclock on September 2, as a pretext for issuing a verbal written warning to him on September 3. I also find that the record leaves little doubt that, the real reason for Severin's and Thiel's action was their hostility toward Smith's activity in support of the Union, as its shop steward. Accordingly, I find that by disciplining Smith with this written verbal warning, the Hospital violated Section 8(a)(3) and (1) of the Act.

C. The Restrictions on Use of the Powerhouse for Breaks and Lunch

Prior to June 5, and since that date, the Hospital has permitted its maintenance employees to take a 15-minute break from 9:30 to 9:45 a.m., and a lunchbreak from 11:30 a.m. to noon. Also, prior to that date, the Hospital had permitted maintenance employees to take breaks and have lunch at the powerhouse, which is located some 200 yards from the Hospital's main building. The powerhouse may be reached from the main building by a tunnel or by walking outside, around the side of the main building. For the most part, the maintenance and engineering department, including Severin's office, is in the basement of the Iselin building, the older portion of the Hospital. There are other work areas and rooms in the Hospital, which Severin's department uses.

I find from the testimony of employees John Colananni and David Smith, who regularly lunched at the powerhouse, that each workday, prior to June, several other employees would also have lunch at the powerhouse. Until June 5, for the 24 years he had been a hospital maintenance employee, Thomas G. Shaffer Sr. regularly divided his lunchbreaks between the maintenance shop and the powerhouse. Plumber John Huston, a hospital employee for 23 years, regularly took his lunchbreak at the powerhouse until June 1992.7

Severin admitted that, prior to June 1992, he, too, occasionally took a lunchbreak at the powerhouse.

On June 5, Severin posted a notice to the Hospital's maintenance employees regarding "Break and Lunch Times." The last paragraph announced a restriction on the use of the powerhouse for lunchbreaks, as follows:

I have recently observed a number of non-powerhouse employees using the Powerhouse for meals. The Powerhouse has never been recognized for use as meal or break area for anyone other than the power engineer on duty, and I would therefore request that all non-powerhouse employees comply with this understanding. As always, the duty engineer may elect to take a break in the Powerhouse or in the main Hospital.

Severin testified that the quoted restriction on the use of the powerhouse for lunchbreaks had been the Hospital's "unwritten" policy prior to June 5. However, the record is bare of any evidence that Severin or any other hospital supervisor ever verbalized that policy to any employee. Nor was there any showing that prior to June 5, Severin, or any other hospital supervisor, had interfered with any employee's use of the powerhouse for a lunchbreak. Neither Severin nor any other Hospital supervisor gave the bargaining unit employees any explanation for the activation of this unwritten policy.

The Hospital did not inform the Union of its intention to activate this policy. Nor did the Hospital offer to bargain with the Union before imposing this restriction on the bargaining unit employees.

Since the posting of Severin's notice, only the power engineers on duty have used the powerhouse for their lunchbreaks. The remaining employees in the maintenance bargaining unit have refrained from eating lunch at the powerhouse.

The General Counsel contends that Severin's restriction on the use of the powerhouse for meals and breaks, which he promulgated on June 5, violated the Act. According to the General Counsel, the evidence shows that Severin imposed this stricture in reprisal for the maintenance employees' selection of the Union as their bargaining representative, and thereby violated Section 8(a)(3) and (1) of the Act. The General Counsel also argues that by failing to notify the Union of its intention to adopt Severin's restriction, and by failing to accord the Union an opportunity to bargain about the restriction, the Hospital violated Section 8(a)(5) and (1) of the Act.

The Hospital denies that the employees' support for the Union played any part in Severin's decision to enforce what it characterizes as a standing policy. Instead, the Hospital asserts that Severin posted the restriction on June 5 because of toxic conditions in the powerhouse and because he saw some employees taking an excessive lunchbreak there.

Further, the Hospital argues, Severin's posting of an existing restriction on use of the powerhouse for breaks and lunch did not entitle the Union to either notice or an opportunity to bargain. I find merit in the General Counsel's contentions.

I find no merit in the Hospital's assertion that the restriction set out in Severin's notice of June 5 to his maintenance department was an expression of existing policy. Scrutiny of Severin's notice and his testimony shows his uncertainty as

⁷ My findings regarding Shaffer's and Huston's use of the power-house for lunchbreaks, are based on their testimony.

to the substance of that policy. At the outset, I note that Severin's notice did not refer to any existing policy limiting use of the powerhouse. Instead, Severin's notice stated that the powerhouse "has never been recognized for use as a meal or break area for anyone other than the power engineer on duty." However, contrary to his notice of June 5, Severin testified that there were occasions when maintenance employees participated in lunch time picnics outside the powerhouse, when the weather was nice, and inside the powerhouse, when the weather was bad.

Severin's testimony also shows that he was less than diligent about enforcing the unwritten policy. Thus, shortly before June 5, when he walked through the powerhouse with a state inspector, Severin noticed five or six unidentified maintenance employees eating lunch in the powerhouse and did not stop to challenge them. Indeed, there was no showing that prior to June 5, Severin or any other hospital supervisor disciplined any maintenance for having lunch in the powerhouse.

Credited testimony of employees Smith, Colonnani, Huston, and Shaffer showed that for the 24 years before June 5, the Hospital permitted maintenance employees to have lunch in the powerhouse. Their testimony also reflects that several maintenance employees regularly took advantage of that option.

Severin conceded that a few maintenance employees "may" have eaten lunch in the powerhouse, prior to June 5. He also admitted that on occasion, he had lunched in the powerhouse. On cross-examination, Severin admitted that the first time he told the maintenance employees about the unwritten policy was in his written notice of June 5. I find, contrary to the Hospital's assertion and Severin's testimony, that until June 5, the Hospital had no policy, written or unwritten, governing the use of the powerhouse as a rest or lunch area. I also find that Severin's notice to the maintenance employees on that date marked the imposition of a new restriction on their use of the powerhouse for regular breaks and lunchbreaks.

The Board has recognized that an employer's imposition of a ban on a longstanding employee practice, in retaliation for its employees' support for a union, violates Section 8(a)(3) and (1) of the Act. *Murphy Oil USA*, 286 NLRB 1039, 1043 (1987). Here, Severin instituted the restriction on the maintenance employees' use of the powerhouse for breaks and lunch with knowledge that the overwhelming majority of them were union supporters. Severin imposed this ban, without explanation to these employees, 2 weeks and 4 days before issuing his negative comment to Leadman Dave Smith, in which he referred to the Union as "outside influences." In this latter incident, Severin showed his willingness to use his supervisory authority to discourage an employee from supporting the Union. I have also found that in

September, when he definitely knew of Smith's tie with the Union, Severin issued a written warning to him, in reprisal for his union activity. Thus, I find that the General Counsel has made a prima facie showing that Severin's hostility toward the Union was a motivating factor in his decision to restrict use of the powerhouse for breaks and lunch.

The Hospital further argues that Severin promulgated the restriction on June 5, to avoid violating the Federal Occupational Safety and Health Act (OSHA). In support of this explanation, the Hospital pointed to an OSHA inspection of the powerhouse, during which the inspector observed asbestos and said that, as there was only one employee working near it, the hazard was acceptable. The Hospital also relied on Severin's testimony, that after observing five or six employees eating lunch in the powerhouse, beyond their 30-minute lunch period, and after the OSHA inspection, he decided to issue the notice of restriction.

I find that the Hospital's explanation does not withstand analysis. First, I note that Severin did not offer this explanation to the maintenance employees in his notice of June 5. This omission suggests that it was an afterthought, formulated to mask the real motive for the restriction. I also note that when Severin saw five or six employees eating lunch in the powerhouse, after the OSHA inspection, he did not order them to leave because of OSHA regulations or because of the underlying statute. That the Hospital did not offer the OSHA inspector's testimony regarding the asserted hazardous environment in the powerhouse suggests that the inspector's testimony would not have supported the Hospital's explanation. Further, on cross-examination, Severin conceded that neither the State nor OSHA had advised him that employees could not eat in the powerhouse.

Finally, the Hospital's explanation runs afoul of the following provision of 29 CFR \S 1910.141, \P 3(g) (Occupational Health and Safety Act), which states:

Consumption of food and beverages on the premises—(1) Application. This paragraph shall apply only where employees are permitted to consume food or beverages, or both, on the premises. (2) Eating and drinking areas. No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.

Had Severin been trying to satisfy OSHA regulations, the quoted paragraph would have told him that the power engineer on duty could not eat lunch in the powerhouse, if, as Severin testified, toxic chemicals were in use there and if asbestos were present. Yet his notice of June 5 announced that the "duty engineer" was free to take breaks and eat lunch in the powerhouse.

From this conflict between the notice and the regulation, Severin's demeanor when asked if he had lunched at the powerhouse, and the factors which I have recited in the preceding paragraph, I find that Severin did not trouble himself about OSHA regulations until the hearing before me. At that point, for the first time, he was obliged to explain the imposition of the restriction announced in that notice. Thus, I find that the Hospital has failed to rebut the General Counsel's prima facie showing of unlawful motivation.

In sum, I find that on June 5, Severin issued his directive, prohibiting nonpowerhouse maintenance employees from

⁸Severin's testimony did not contradict the testimony of the four employees, who testified about this topic in a forthright manner. However, when examined by counsel for the General Counsel, Severin seemed annoyed and reluctant to concede that prior to June 5, a number of maintenance employees had used the powerhouse for a lunchroom. Accordingly, where there was inconsistency between Severin's and their testimony, regarding the extent to which maintenance employees used the powerhouse as a lunch area, and the Hospital's apparent attitude toward such use, prior to June 5, I have credited the four employees.

using the powerhouse for breaks and lunch in reprisal for their support for the Union in the representation election and to discourage them from continuing such support. I also find that by this discriminatory conduct, the Hospital violated Section 8(a)(3) and (1) of the Act. *Economy Foods*, 294 NLRB 660 (1989).

I also find for the following reasons that the Hospital had a duty to give the Union notice of the contemplated prohibition, and an opportunity to bargain about it before putting it into effect.

Where, as here, a labor organization has won a Board-held election, and the resolution of objections to the election resulted in the Union's certification, the Board, in *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975), provided the following guidance regarding an employer's duty to bargain collectively in such circumstances:

[A]bsent compelling economic considerations for doing so, an employer acts at its peril in making changes in terms and conditions of employment during the period that objections to an election are pending and the final determination has not been made. And where the final determination on the objections results in the certification of a representative, the Board has held the employer to have violated Section 8(a)(5) and (1) for having made such unilateral changes. Such changes have the effect of bypassing, undercutting, and undermining the union's status as the statutory representative of the employees in the event a certification is issued.

I find that on June 5, the Hospital made a material, substantial, and significant change in a term or condition of employment, when it prohibited maintenance employees from taking breaks and eating lunch in the powerhouse. *Advertiser's Mfg. Co.*, 280 NLRB 1185, 1191 (1986). This change occurred while objections to the election of September 1991 were pending. Thereafter, the Board certified the Union as the maintenance employees' bargaining representative on September 30. Therefore, unless, the Hospital was faced with some "compelling economic considerations" it was not at liberty to make such a change without notifying the Union of the contemplated change and giving it an opportunity to bargain about it.

Relying on *Murphy Oil USA*, 286 NLRB at 1042, the Hospital, argues that here, as in that case, OSHA regulations compelled it to impose the prohibition and thus excused it from bargaining with the Union about the prohibition. However, I have found that the Hospital did not rely upon any OSHA regulation, when Severin prohibited maintenance employees from using the powerhouse for breaks and lunch. Instead, I have found that Severin was motivated by antiunion reasons. Therefore, I find that the Hospital was not exempt from its bargaining obligation. Accordingly, I find that the Hospital violated Section 8(a)(5) and (1) of the Act by its failure to give the Union an opportunity to bargain about its decision to prohibit maintenance employees from using the powerhouse for breaks and lunch.

D. The Changes in the General Maintenance Employees' Work Schedules

Since 1967, the Hospital has burned red-bag waste, which is bio-hazardous, in an incinerator, located in its powerhouse. Prior to December 1989, the powerhouse engineers burned the red bags during the second shift, from 3 until 11 p.m. In December 1989, the Hospital shifted the burning of red bags to the third shift, from 11 p.m. to 7 a.m. I find from Director Severin's testimony, that the Hospital burned this toxic waste at night, as a public relations measure, and to protect the operating rooms from smoke. The Hospital believed that the dirty smoke, which was visible during daylight hours, harmed its image and impaired the atmosphere in its operating rooms.

In late 1989, the Pennsylvania Department of Environmental Resources (DER) inspected the incinerator and found that it did not meet current air pollution standards. DER instructed the Hospital to take corrective action or stop the burning. The Hospital elected to refurbish the incinerator.

The Hospital finished rebuilding its incinerator in 1991. From May until July 1991, the Hospital burned red-bag trash in the incinerator, on the third shift. On the weekends, during that period, only one person worked the third shift, in the powerhouse.

After failing a DER test of the incinerator's emissions, in July 1991, the Hospital began burning a 50/50 proportion of noninfectious, green-bag waste to infectious, red-bag waste. In November 1991, at the request of employees, Severin, in violation of the Hospital's DER permit, authorized the burning of only red-bag waste. The employees had complained that the burning of both types of bags was burdensome, because of the length of the burning process and the increased heat in the incinerator when they cleaned out the ash.

Severin did not seek a change in the Hospital's 50/50 permit from DER, until March 24, when, by letter, he asked DER about changing the Hospital's license to red-bag burning only. On April 2, Severin received a response from DER explaining that the requested change could be accomplished if the incinerator were retested and found to be in compliance with DER's standards.

The employees, with Severin's agreement, changed the burn schedule. They burned the red bags during the first shift on Tuesdays, at midnight on Thursdays, and during the second shift on Saturdays. Severin maintained this schedule until April. On April 10, DER inspected the Hospital and, found that it was burning red-bag waste only, when it's license limited it to burning a 50/50 red-bag and green-bag mixture. DER cited the Hospital for violating its license. Severin immediately ordered the employees to burn a 50/50 mixture.

Along with the change in the composition of the burns, Severin changed the burn schedule. Burning of waste was to be done 7 days per week, but only at night, on the third shift. The incinerator would then cool down during the first shift, and be cleaned during the second shift. This schedule has continued in effect until the present.

Shortly after Severin instituted this new schedule, Carl Beck, a night-shift powerhouse engineer, complained that when he was on duty, he could not burn the waste and effectively cover the Hospital's maintenance emergencies. Em-

ployee David Smith received similar complaints from two night-shift powerhouse operators. The new incinerator's faster burning required reloading every 10 to 15 minutes.⁹

Severin decided to add one general maintenance employee to each of the third shifts on Friday and Saturday nights. In early June, he instructed Kathie Harshyne, secretary for the Hospital's engineering and maintenance departments, to develop a schedule whereby general maintenance employees would cover the night shifts on Fridays and Saturdays, from 11 p.m. until 7 a.m.

Carrying out Severin's instructions, Harshyne changed the work schedules of general maintenance employees John Colananni, Frank Pina, and John Rapacuk. ¹⁰ Prior to this change, Colananni worked the day shift, from 7 a.m. until 3 p.m. He also worked every other weekend, and had Thursdays and Fridays off, on the alternate weeks. Prior to June, employees Pina and Rapacuk worked only first and second shifts, had every other weekend off, and had Thursdays and Fridays off on the alternate weeks. Under Harshyne's schedule, which began in June, ¹¹ Colananni, Pina, and Rapacuk were scheduled to work 11 p.m. to 7 a.m. shifts, some on Friday nights, in addition to first and second shifts. Also, during some weeks, their 2 days off are Monday and Friday, instead of back-to-back days.

Severin adopted Harshyne's schedule, without notifying the Union, and without giving the Union an opportunity to bargain on behalf of the Hospital's maintenance employees. I find from David Smith's testimony that soon after the new schedule went into effect, he attempted to discuss it with Severin. Smith suggested that the burning of waste could be done on the second shift, when there were enough maintenance employees present to cover the Hospital's needs.

Severin did not want to discuss the matter. The schedule which Severin adopted in June, remains in effect.

Here, I find that the General Counsel has made a prima facie showing that Severin changed the general maintenance employees' work schedule in June as a reprisal against them because the Union had won the election in September 1991. This change in schedules had an adverse impact on the three employees involved. Prior to this change, they were not required to work on the 11 p.m. to 7 a.m. shift and they enjoyed 2 consecutive days off each week. After the change, each of the three general maintenance employees was on the third shift on four occasions during his 12-week work schedule, and during 4 of those weeks, his days off fell on Friday and Monday. Severin brought about the change by directing Kathie Harshyne to draw up a schedule showing a general maintenance employee on each weekend night shift. This directive came in June, a month marked by Severin's resort to reprisals violative of Section 8(a)(3) and (1) of the Act, which were designed to discourage employees from supporting the Union. Given these manifestations of antiunion sentiment, and the timing of Severin's directive, there is sufficient evidence to suggest that he acted once again to coerce employees into abandoning the Union.

The Hospital contends that union hostility had nothing to do with Severin's decision to assign three general maintenance employees to weekend duty on the third shift. In his testimony before me, Severin denied that union affiliation had anything to do with his decision in this regard. Severin's denial finds support in the fact that his decision followed closely on powerhouse engineer Carl Beck's complaint that he could not feed the incinerator and perform maintenance chores on the weekend third shifts, when there were no other maintenance employees on duty at the Hospital. David Smith received similar complaints from other powerhouse operators.

The record shows that prior to June, Severin had shown a similar response to employee complaints. In November 1991, 2 months after the Union's election victory, Severin quickly returned to burning infectious waste, when employees pressed him to do so. I find from his uncontradicted testimony, that the employees convinced him that burning infectious and noninfectious waste was a hardship because the heat generated by the prolonged burning impeded them when they cleaned the incinerator. Thus, Severin's conduct in June may well have been motivated by an employee's complaint rather than his hostility toward the Union.

Counsel for the General Counsel points to evidence showing that Severin did not have to inconvenience any maintenance employee, as he had the option of burning waste on the second shift, when there were sufficient general maintenance employees present to solve the powerhouse operator's complaint. Based on that showing, counsel urges that Severin went out of his way to make it necessary to schedule the three maintenance employees for the third shift on weekends. However, I find that argument to be wide of the mark.

My ground for rejecting the General Counsel's position is that there is no allegation that the decision to continue burning waste on the third shift was an unlawful reprisal against the maintenance employees. Instead, the alleged unfair labor practice was the scheduling of three general maintenance employees to implement that lawful decision, which Severin had made in April, under pressure from DER. The merit of Severin's decision to burn waste on the third shift is not

⁹I based my findings regarding the operation of the new incinerator and the need to assign a general maintenance man to the night shift in the power, on Severin's, Smith's, and employee Joseph Yagle's testimony.

¹⁰ In making my finding that Harshyne changed the three employees' work schedules, I have relied on Severin's and Harshyne's testimony. Employee Joe Yagle testified that David Smith drew up the new schedule for the three general maintenance employees. However, Smith did not corroborate that testimony. Severin convincingly identified the schedules and testified that Harshyne prepared them. Harshyne, who impressed me as being a candid witness, corroborated Severin's testimony.

¹¹ According to employees John Colananni and Joe Yagle, the Hospital changed their work schedules in April. David Smith testified that the changes began in May. However, the Hospital's records rebut that testimony and corroborate Severin's, testimony, which indicated that the changes took effect in June.

¹² Severin denied that David Smith ever sought to discuss with Severin the burning of waste on the second shift. When asked if he was sure that Smith had not approached him about burning on the second shift, Severin testified that as he had set up the burn schedule to dispose of the 50/50 mixture, he would have remembered if someone had asked him to change that schedule. However, in light of Severin's hostility toward the Union and his refusal to deal with Smith as the Union's shop steward, I find it likely that he would have turned a deaf ear to any of Smith's suggestions regarding shift scheduling. Moreover, unlike Smith, who testified in a full and forthright manner, Severin's denial was in response to a leading question by the Hospital's counsel. Accordingly, I have credited Smith's testimony.

under scrutiny here. Only the decision to comply with the powerhouse employee's complaint is before me at this juncture. Thus, Severin's selection of a particular shift for burning waste was immaterial to the success of the General Counsel's contention that the three maintenance employees were victims of his antiunion sentiment.

In sum, I find that the General Counsel has not shown by a preponderance of the evidence that Severin's explanation of his decision to assign general maintenance employees to weekend night shifts was pretextual. Further, the Hospital has adequately shown that Severin would have made that decision even if the maintenance employees had not supported the Union. Accordingly, I find that the rescheduling of employees Colananni, Pina, and Rapacuk in June did not violate Section 8(a)(3) and (1) of the Act.

However, I agree with the General Counsel's contention that the Act required the Hospital to notify the Union of the contemplated changes in the three employees' work schedule, and to give the Union a reasonable opportunity to negotiate about them with the Hospital. The Board's policies, as set forth above, in my discussion of the Hospital's unilateral imposition of a restriction on employees taking lunchbreaks at the powerhouse, are wholly applicable to the rescheduling of the three maintenance employees in June. The Hospital has not shown that Severin had no choice but to burn the waste on the third shift. He could have burned it on the second shift and avoided making the changes in scheduling for the three general maintenance mechanics. Therefore, I find that by making those changes in the three unit employees' work schedules, without giving the Union an opportunity to bargain collectively about them, the Hospital violated Section 8(a)(5) and (1) of the Act. Angelica Healthcare Services, 284 NLRB 844, 853 (1987).

In its posthearing brief, the Hospital argued that the decision in *St. John's Hospital*, 281 NLRB 1163, 1168 (1986), requires a finding that it had no duty to bargain about the rescheduling of the general maintenance employees. I disagree. In that case, the Board found that an employer's unilateral enforcement of restrictions on smoking and drinking by employees during shift changes, at a time when the employer had a duty to bargain with a union, was not violative of Section 8(a)(5) and (1) because the restrictions were not "a material substantial change from prior practice." However, that holding has no application to the Hospital's unilateral changes in the working hours in the instant case, which, I find, were material and substantial. and therefore subject to the collective-bargaining process.

E. Changes in the Work Schedules of Employees Charles P. Huston and Thomas G. Shaffer Jr.

Employees Charles P. Huston and Thomas G. Shaffer Jr. are the most senior employees in Severin's maintenance department. Huston has been a plumber in that department for 23 years. Shaffer has worked as an electrician in the Hospital's maintenance department for 25 years, and is the department's most senior employee. Huston is the second most senior employee in that department.

Prior to June, Huston normally worked on the maintenance department's first shift, from 7 a.m. until 3:30 p.m., on weekdays, only. For the 20 years prior to June, Shaffer regularly worked on the day shift, weekdays only. However, I find from Kathie Harshyne's testimony, that once or twice

yearly, she scheduled them for other shifts, when their work on a construction project required such a change, or if their work assignment was in an area of the Hospital which was not accessible to them during the day. I find from Shaffer's testimony that perhaps once in 6 months, he would work on a different shift because of an emergency, or because he had volunteered. From Severin's testimony, I find that prior to June, Huston and Shaffer rarely worked at the Hospital during a weekend.

Severin did not recall any instance in which he called either of them in on a weekend to perform general maintenance work. Before June, on occasions when his plumbing work was light, Huston would help with maintenance work. Prior to June, Shaffer occasionally did general maintenance work at the Hospital. The Hospital's records reveal that in 1992, prior to June, he worked on four Saturdays and five Sundays. However, there was no showing that he had been scheduled ahead of time to work on those days.

In late June, Severin made some changes in Huston's and Shaffer's work schedules, and, in Huston's case, changed the nature of his work, as well. Severin assigned Huston to general maintenance work, on the first shift on June 25, and on the second shift on June 26. On June 26 and 27, Severin put Shaffer on the third shift, from 11 p.m. until 7 a.m. Severin also assigned electrical work in an operating room to Shaffer. However, Shaffer was too busy with maintenance work on those two nights to work in the operating room. Shaffer's testimony shows that the operating room was in use during weekdays, and thus not accessible to him during his normal shift.¹³

In July and August, Severin substituted Huston for general maintenance employee Frank Pina, who was absent on a workman's compensation injury. Of the 20 workdays for which Severin scheduled Huston in July, 16 were on the first shift, 2 were on the second shift, and 2 were on the third shift. Also, Pina's schedule required Huston to work four weekends. Of the 15 workdays for which Severin scheduled Huston in August, 10 were on the first shift and 5 were on the 3 to 11 p.m. shift. The Hospital's records show that Pina returned to work on August 31.¹⁴

During July and August, other craftsmen were available to perform general maintenance in place of Pina. Ed Knapic, Dan McQuiston, Dan Provias, and Rich Walters were all working during all or most of Pina's absence. Their seniority in the Maintenance Department ranged from 11 or 12 years for Knapic, to 2 years for Walters and Provias. McQuistan had been in the department since "somewhere around 1985." ¹⁵

Beginning on July 16, painter Mike Sprinkle substituted for general maintenance mechanic John Colananni, until the end of August or the beginning of September, during the latter's absence. This change in schedule was not the subject of a complaint allegation.

¹³ My findings regarding the work assigned to Shaffer for the nights of June 26 and 27, and his inability to perform the electrical work in the operating room are based on his testimony.

¹⁴ In finding that it was Severin, who scheduled Huston in July and August, I have relied on Kathie Harshyne's testimony.

¹⁵ My findings regarding the seniority of the four craftsmen available to work during Pina's absence were based on Kathie Harshyne's testimony.

Severin made the changes to Huston's and Shaffer's work schedules without prior notice to the Union. Nor did he afford the Union an opportunity for bargaining collectively about them.

According to the General Counsel, Severin changed Huston's and Shaffer's schedules, as recited above, because the maintenance employees voted the Union in as their collective-bargaining representative. The Hospital urges rejection of the General Counsel's position on the ground that evidence of unlawful motive is wanting. Contrary to the Hospital, I find that the record amply sustains the General Counsel's contentions regarding Severin's motive.

The changes in Huston's and Shaffer's schedules were unusual for them. During his 23 years with the Hospital, prior to June, Huston's regular schedule was limited to day shifts on weekdays. Also, prior to June, the Hospital had never assigned Huston to do only general maintenance work. Severin scheduled Huston to perform only general maintenance on the first shift, on June 25 and on the second shift, on June 26. In July and August, Severin gave general maintenance employee Pina's schedule to Huston. Thus, Severin required Huston to perform general maintenance, rotate shifts, and work weekends. Compared to Huston's normal routine, Pina's schedule was clearly unappealing.

During the last 20 of Shaffer's 25 years with the Hospital, his normal schedule had been first shift on weekdays. In 1992, prior to June, Shaffer had worked on four Saturdays and five Sundays. However, the record does not show whether he was scheduled for those weekend days, or whether some project or an emergency required his presence at the Hospital on those occasions. In any event, Severin's scheduling of Shaffer to work on Friday and Saturday, June 26 and 27, on the third shift, which ran from 11 p.m. until 7 a.m., the following morning, was unusual, and not a desirable change from his normal assignment to the daylight shift. While on the third shift, Shaffer was the only employee available to perform general maintenance.

Severin's selection of Shaffer and Huston for unusual changes in their shift assignments occurred in circumstances which had accompanied Severin's discriminatory conduct against David Smith and the maintenance employees who had used the powerhouse for lunchbreaks. In those instances, I found that Severin had used his supervisory authority to violate Section 8(a)(3) and (1) of the Act by punishing members of the bargaining unit, which had supported the Union in the 1991 Board-held election. Severin made the unpleasant changes in Shaffer's and Huston's work schedules, set out above, in the wake of his unlawful prohibition against use of the powerhouse for lunch, soon after his unlawful critical comment in David Smith's evaluation, and shortly before he issued a disciplinary warning against David Smith in violation of Section 8(a)(3) and (1) of the Act. In each of the earlier Wright Line analyses, I found a prima facie showing that Severin was motivated by hostility toward the Union. I find that the General Counsel has made a similar showing here.

His reference to the Union as an outside influence in Smith's evaluation, which was issued on June 23, showed that Severin was well aware of the Union. His resort to the critical comment in Smith's otherwise excellent evaluation, the use of a pretext to inflict a disciplinary warning on David Smith, and the reliance on another pretext to bar unit employee from the powerhouse, all in retaliation for the Union's

victory in the 1991 representation election, suggested that hostility to the Union moved him to punish his employees whenever he perceived an opportunity to do so.

In one episode, however, the evidence did not convince me that Severin had acted out of hostility toward the Union. Thus, in section D, above, I found that the General Counsel had failed to show by a preponderance of the evidence that union animus had provoked Severin, when he changed three general maintenance employees' schedules in June. In making that finding, I credited Severin's explanation which showed a compelling economic motive. Here, however, the Hospital has not shown any compelling reason for the selection of Huston and Shaffer for shift changes.

There was no showing of any compelling economic reason why Severin had to assign Huston to perform general maintenance on June 25 and 26, or why he was forced to schedule Huston for the second shift on June 26. Severin passed over McQuiston, Provias, Walters, and Colananni, all of whom were available for general maintenance work on those dates. Nor was there any showing why one of these maintenance mechanics could not have done Pina's work, instead of Huston. Also, there was no showing that Shaffer was the only maintenance employee available for general maintenance work, on the third shift, on the nights of June 26 and 27

Severin testified that the employees' "union affiliation" played no part in the scheduling of employees. He also testified that he chose Huston to substitute for Pina because Huston was "available." However, the record showed that though other maintenance employees were available, Severin singled out Huston, the second most senior of his employees, to take on a work schedule substantially less desirable than his normal schedule, and to perform general maintenance work, instead of his craft work. Thus, I find Severin's explanation for his treatment of Huston unconvincing.

Similarly, I find that Severin has not adequately explained why he selected Shaffer, his most senior maintenance employee, to do electrical work in an operating room on the third shift over a weekend, when he would be the only maintenance employee present with the powerhouse operator. For, by thus exposing Shaffer to demands for general maintenance work, Severin made it impossible for him to perform the electrical work on those two nights. Severin could have selected a general maintenance employee to perform the general maintenance work on the third shift on June 26 and 27, and scheduled Shaffer to do the operating room electrical work on the first shift on those dates. Instead, he hand-picked Shaffer to work on the two weekend night shifts, which compared unfavorably with Shaffer's normal shift assignments.

In sum, I find that Severin's proffered explanations were pretextual. I further find, therefore, that the General Counsel's prima facie showing of unlawful motive stands unrebutted. Accordingly, I find that Severin's changes in Huston's and Shaffer's work schedules in the summer of 1992 violated Section 8(a)(3) and (1) of the Act.

It is undisputed that the Hospital did not provide the Union with any opportunity to negotiate about the changes in Huston's and Shaffer's work schedules in the summer of 1992. I also find that the Hospital has not shown any compelling economic reasons for making these unilateral changes. In light of the Union's subsequent certification as

the bargaining representative of its maintenance employees, I find that when Severin made these material, substantial, and significant changes in the working hours of bargaining unit employees, unilaterally, the Hospital acted at its peril. *Mike O'Connor Chevrolet*, 209 NLRB 701, 703 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975). As the Board thereafter certified the Union on September 30, I find that the Hospital's unilateral changes in Huston's and Shaffer's work schedules violated Section 8(a)(5) and (1) of the Act. *Angelica Healthcare Services*, supra.

F. The Lead Groundskeeper's Job Description

When the Hospital transferred John Colananni to the general maintenance mechanic classification in October 1991, he had been its lead groundskeeper since 1987. During those 4 years as lead groundskeeper, he had worked under a job description, which the Hospital had approved in 1987. Colananni's principal duties and responsibilities under that job description were as follows:

- 1. Work with the Director of Facilities Management to develop and document scheduling with performance duties of personnel on a daily, weekly, or seasonal schedule.
- 2. Initiate and assist Facilities Management Director in the development of landscaping and planning architectural design.
- 3. Direct, assist, and perform a variety of labor functions to achieve the beautification and safety of the facilities properties to include, but not limited to, cultivating, planting, mowing, pruning, weeding, application of chemicals, water, trash removal, snow removal, and equipment repairs.
- 4. Must have a private license for the application of chemicals for the treatment of plant life and vegetation.
- 5. Must be capable of operating and understanding the use of mobile and a variety of hand tools.
- 6. When seasonal conditions do not permit performance of duties exterior of the building (roads and grounds) the individual will work within the facilities and assist the Engineering and Maintenance personnel in the performance of a variety of repair functions.
- 7. Must be familiar and have some experience with hardware i.e, door closures, locks, etc.; carpentry, minor plumbing and electrical repairs.

Knowledge, Skills, and Abilities Required

- 1. Must be a high school graduate with at least three years horticulture experience or equivalent.
- 2. Manual dexterity is necessary to handle garden tools, bulbs, seeds, and plants.
- 3. Foot-hand-eye coordination when operating power equipment.
- 4. Color perception is necessary to determine harmonious or contrasting arrangements of garden plots.
- 5. Spatial perception is necessary when positioning, aligning, and clipping plants, shrubs, or trees.
- 6. Interpersonal skills necessary to lead and deal effectively with others.
- 7. Must possess a valid State of Pennsylvania Driver's License.

Working Conditions

Must be able to lift, bend and do excessive walking.

On February 13, the Hospital hired Mark Ohi as its lead groundskeeper. Ohi has retained that position since that date.

In the spring, Ohi asked Kathie Harshyne for a copy of his job description. Harshyne told Ohi that she did not think there would be any problem fulfilling his request. However, she did not fulfill it immediately. A few days later, Ohi returned and renewed his request. Harshyne had forgotten about it, but she assured Ohi that she would check with Severin, and get the job description. When she had an opportunity, Harshyne mentioned Ohi's request to Severin, who approved it.

In her effort to provide a job description to Ohi, Harshyne became confused, when she came on two job descriptions for lead groundskeeper. One was the 1987 job description, set out above, in pertinent part. The other was a job description which Severin had drawn up, which was materially different from the 1987 job description.

Severin had drafted the second description, using language which, for the most part, is identical with that used in the 1990, 1991, and 1992 evaluations of the lead groundskeepers, Colonanni and Ohi, respectively.

The job description which Severin drafted differs from the 1987 lead groundskeeper's job description by the addition of the following duties and responsibilities:

- 2. Assign personnel to accomplish scheduled/ unscheduled workload to include development of snow removal, plan.
- 4. Submit documented requests for materials, equipment, and repairs of equipment to maintain a creditable operation.
- 5. Inform supervision, with documented evidence of the endangerment of plant and animal life within a reasonable time to permit alternatives to be enacted.
- 8. All work areas are to be left clean, neat and free of debris. Tools and equipment are to be returned to the normal storage areas.
- 9. Inform with documented evidence of equipment and tool failure and/or loss.
 - 10. Maintain equipment and tool inventory.
- 11. Perform a variety of driving (delivery/pickup) duties with facility vehicles.
- 12. Work performance shall conform to the departments and hospital's Quality Assurance Activities.
 - 13. Performs other related duties as assigned.

Severin studied the two job descriptions, chose his version, signed his name on its second page, dated it "5–12–92," and handed it to Harshyne, with direction to give a copy to Ohi. Harshyne made a copy and gave it to Ohi.

In addition to a description of principal duties and responsibilities, Severin's version included a listing of "Knowledge, Skills, and Abilities," as follows:

- 1. Must have a degree in Landscape Contracting or related field with at least 3 years horticulture experience or equivalent.
- 2. Have a minimum of 2 years experience in performing and directing groundkeeping activities, schedul-

ing, decision making, planting, pruning, mowing, snow removal operations with [sic] through knowledge with shrubs, trees and plant life.

- 3. Manual dexterity to utilize hand tools and operate power equipment.
 - 4. Good written and verbal communication skills.
- 5. Must be capable of developing and interpreting planting diagrams and landscaping plans.
 - 6. Possess a valid PA Class 1 driver's license.
- Possess a valid private chemical application license.

Severin's job description also had a section headed: "Working Conditions," which consisted of the following:

Encompass, lifting, bending, inclement weather (hot-cold), high and low areas, agility, dexterity is necessary.

This section differed substantially from the "Working Conditions" in the 1987 job description, which only required ability "to lift, bend, and do excessive walking."

At the hearing, the Hospital produced a second draft of Severin's proposed job description, which had been approved by its vice president for personnel services, Dominic Paccapaniccia. According to Paccapaniccia, this job description is also a draft. I note that this second draft conforms to the draft given to Ohi, except that it omits "13. Performs other related duties as assigned."

The General Counsel argues that the job description, which Severin signed and dated on May 12, was Ohi's new job description. The Hospital replies that the 1987 job description remains in effect, and that neither Severin's nor Paccapaniccia's drafts are in effect because neither has received the required approvals. The Hospital also urges me to note that the same criteria set out in the job description, which Ohi received in the spring of 1992, also appear in Colananni's 1990 and 1991 evaluations. I find that the General Counsel's position and the Hospital's initial position that the 1987 job description is the current job description ignore reality. For, as the Hospital urges in its alternative position, the language of the 1992 job description drafts had already appeared in Colonanni's evaluation in 1990 and again, in 1991. Thus, a new job description for the lead groundskeeper appeared first in the 1990 evaluation, and has been repeated in subsequent evaluations for Colananni and Ohi, respectively. The disputed drafts were attempts to formalize that job description.

I find that, except for item 13, the language of Severin's "Principal Duties and Responsibilities" section, did not add to the requirements of the appraisal factors in the 1990 and 1991 personnel performance appraisals for lead groundskeeper John Colananni. However, unlike the drafts, the appraisal form also added coordination of "the necessary housekeeping duties with the Engr. & Maint. Supervision on a scheduled basis of the facilities waste compactor and incinerator" to clarify one of the major appraisal factors. This clarification is absent from Severin's draft as well and from the draft he and the vice president signed. However, both drafts include the major appraisal factor. I also note that the draft signed by Severin and Vice President Paccapaniccia omits item 13 and, except for the coordination of "the necessary housekeeping duties" adopts the appraisal factors'

language. Thus, the Hospital was using all but one of these criteria, and only one additional element to clarify a major factor, to evaluate its lead groundskeepers, prior to the Union's election victory in September 1991. I find therefore, that Severin's draft and the draft signed by Paccapaniccia substantially documented the job's content, which had been in effect since at least 1990.

Contrary to the General Counsel's contention, I find that neither the job description, which Ohi received from Severin, nor the job description, which he and Paccapaniccia subsequently signed, significantly or materially altered the job description for the Hospital's lead groundskeeper. Nor was there any showing that the Hospital has enforced the added "Knowledge Skills, and Abilities" or the new requirements of the "Working Conditions" sections of Severin's draft or of the draft job description signed by Severin and Vice President Paccapaniccia. Thus, the General Counsel has failed to show that the Hospital, by issuing Severin's version of the lead groundskeeper's job description to Ohi, had violated its duty to bargain with the Union. I also find, therefore, that the Hospital did not violate Section 8(a)(5) and (1) of the Act, by issuing that job description in the spring of 1992. Nor did the Hospital violate Section 8(a)(5) and (1) of the Act, when it unilaterally drafted the job description for its lead groundskeeper, which Severin and Vice President Paccapaniccia signed. Accordingly, I shall recommend dismissal of the complaint allegation regarding that job descrip-

G. The Change in the Policy Regarding Assignment of Snow Removal Duties

In January 1987, the Hospital formulated a snow removal policy, which it revised in 1988, and which it included in the engineering and maintenance department's policy and procedure manual. That policy requires that engineering and maintenance department employees do snow removal on the second and third shifts, on weekends, and on holidays. In implementing that policy, each autumn, the Hospital posted a signup sheet on a bulletin board, seeking engineering and maintenance department volunteers. Each year, before November 1992, enough maintenance employees volunteered to satisfy the Hospital's needs. The snow removal policy did not provide guidance when there were insufficient engineering and maintenance department volunteers for snow removal.

In the autumn of 1992, the Hospital posted a signup sheet, seeking volunteers for snow removal. No one signed it.

The bargaining unit employees withheld their signatures for a variety of reasons. David Smith did not volunteer because he wanted to bargain collectively with the Hospital about the snow removal policy. On November 10, he requested, in writing, that Severin sit down and discuss that policy. John Colananni did not volunteer for snow removal because he did not like the new lead groundskeeper. Maintenance employee Charles Huston did not signup because he ''didn't want to come in for snow removal.''

Confronted with an empty signup sheet, the Hospital drew up and promulgated the following directive:

REVISED POLICY FOR SNOW REMOVAL ON AFTERNOON, NIGHT AND HOLIDAY SHIFTS ONLY

In the event that no volunteers or an insufficient number of volunteers sign the posted Snow Removal Volunteer List, the respective Power House employee will call each Engineering and Maintenance employee according to seniority order and ask if they want to volunteer to come in and do snow removal.

In the event that no volunteers or an insufficient number of volunteers are obtained through this procedure in Paragraph No. 1, then the Power House employee will call the secondary list comprised of volunteers from other Hospital employees.

In the event that no volunteers or an insufficient number of volunteers are obtained through the procedures in Paragraph Nos. 1 and 2, the Power House employee will call the Engineering and Maintenance employees according to reverse seniority order and inform them that they are required to come in and do the snow removal

During the winter of 1992–1993, the Hospital implemented the first paragraph of the quoted revision. After concluding that additional help was needed to remove snow, a powerhouse employee called maintenance employees in on a volunteer basis. All the employees who were called volunteered. Thus, in that period, the Hospital did not implement either the second or the third paragraphs.

At the time the Union's shop steward, David Smith, requested bargaining regarding the snow removal policy, the Union had been certified as the exclusive bargaining representative of the Hospital's maintenance employees since September 30. In a memorandum to David Smith, dated November 11, the Hospital rejected his request for collective bargaining regarding the new snow removal procedure, stating that it was challenging the Board's certification of the Union as the bargaining representative of the Hospital's maintenance employees.

The General Counsel urges a finding that the Hospital violated Section 8(a)(5) and (1) of the Act, when it revised its snow removal policy in November 1992, without giving the Union an opportunity to bargain on behalf of the Hospital's maintenance unit. The Hospital contends that it had no duty to bargain on the grounds that its November 1992 revisions of the snow removal policy were not material, substantial, and significant and that they were temporary measures necessitated by the employees' unlawful concerted work stoppage. I find that the Hospital has violated its statutory duty to bargain with the Union, as urged by the General Counsel.

In November 1992, Sections 8(a)(5) and 8(d) of the Act required the Hospital to refrain from imposing new and different working conditions on its maintenance employees without first giving their Board-certified representative, the Union, an opportunity to bargain about them. *NLRB v. Katz*, 369 U.S. 736, 741, 742–743 (1962). Thus, the Hospital was obliged to give prior notice to its maintenance employees' representative of any managerial decision which might have an effect on the bargaining unit's employment conditions so that the Union might have had a reasonable opportunity to evaluate the proposal and present a counterproposal before the change took place. E.g., *M & M Contractors*, 262 NLRB 1472 (1982). However, that obligation arose only if the contemplated revision of the snow removal procedure was material, substantial and significant, and affected the unit employ-

ees' tenure or their terms and conditions of employment. San Antonio Portland Cement Co., 277 NLRB 309, 313 (1985).

Contrary to the General Counsel, the Hospital argues that it was not required to bargain with the Union about the November 1992 revision of its snow removal policy because it was insignificant, insubstantial, immaterial and, in any event, only temporary. I disagree with the Hospital.

I find that the three-step procedure, which the Hospital adopted in November 1992, to assure itself of adequate personnel for snow removal, contrasted sharply with its previous procedure for achieving that objective. Thus, prior to November 1992, the Hospital made snow removal duties purely voluntary. The Hospital simply posted a signup sheet and maintenance employees signed it. Under the new procedure, if there are insufficient volunteers, the Hospital may require maintenance employees to report for snow removal duty during their off hours. I find this element of the new procedure is a significant, substantial, and material change. *Venture Packaging*, 294 NLRB 544, 556 (1989).

I also find no showing that the Hospital promulgated this change, and made it part of its policy and procedure manual, with any indication in the text or elsewhere, that it was only temporary. Nor did Daniel Severin's testimony regarding this change suggest that the he or the Hospital considered this revision temporary. Nor was there any other evidence in the record before me to suggest that it was only temporary.

Nor can I agree with the Hospital's contention that it was excused from bargaining about the November 1992 revision of its snow removal policy because the bargaining unit engaged in a concerted work stoppage in violation of Section 8(g) of the Act. 16 Initially, I find that the employees, who refused to volunteer, did not engage in a work stoppage. Instead, I find that they engaged only in a concerted refusal to volunteer. At no time did any of the Hospital's maintenance employees refuse a direction to report for duty and clean snow.

Nor did the employees' concerted refusal to volunteer run afoul of Section 8(g) of the Act because they did not give written notice as required by that section. For it is well settled that the notice requirement of Section 8(g) of the Act applies only if the work stoppage is by a labor organization. E.g., *East Chicago Rehabilitation Center*, 259 NLRB 996, 999 (1982), enfd. 710 F.2d 397 (7th Cir. 1983). Here, there was no showing that the Union organized or authorized the maintenance employees' concerted refusal to volunteer. In sum, I find that the Hospital, by its unilateral revision of its snow removal policy, in November 1992, violated Section 8(a)(5) and (1) of the Act.

¹⁶ Sec. 8(g) of the Act reads:

⁽g) A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties

H. The Change in Policy Regarding Employee Requests for Information

Prior to July 30, the Hospital had regularly honored its employees' oral requests for information such as the maintenance and engineering department's budget, job descriptions, natural gas bills, electric bills, blueprints, personnel files, work orders, and job related reports. When department secretary Kathie Harshyne received an oral request from a maintenance and engineering department employee for information, she would normally honor the request without consulting Severin. However, if the request was for information which had never been sought before, she would not release the information without Severin's approval.

On July 30, the Hospital's president and CEO promulgated a directive to its administrative staff, department managers, and nursing unit managers regarding "Employee Requests for Files," which declared:

No Hospital files pertaining to any subject should be released to employees requesting same from you.

Any requests to see files should be in writing and submitted to Mr. Dominic Paccapaniccia, Vice President for Human Resources and Development.

There are no exceptions to this policy.

The Hospital posted this directive on the maintenance and engineering department's bulletin board in early August, without either notifying the Union of its intention to do so or giving the Union an opportunity to bargain about it. On August 7, Steward David Smith asked Severin for an ash report. Severin did not comply with Smith's request. Instead, he instructed Smith to put his request in writing and address it to Vice President Paccapaniccia.

Since May 1990, the Hospital has included the following provision in its employee handbook:

RELEASE OF INFORMATION

GENERAL PROCEDURE

Any information involving actions or overall activities of the Hospital will be released only through the Public Relations Department or by the President and CEO, unless responsibility is delegated to another individual or department in specific instances. No employee of the Hospital is to assume responsibility for release of information without specific authorization.

Inquiries from the news media should be referred to the following:

During working hours, between 8:00 a.m. and 5:00 p.m., Monday through Friday, all calls should be directed to the Public Relations Department.

When the office is closed, calls should be directed to the Nursing Coordinator for patient condition issues and to the Vice President Public Relations, on other issues.

The General Counsel urges me to find that the Hospital violated Section 8(a)(5) and (1) of the Act, by promulgating and enforcing this innovation. The Hospital argues that its directive of July 30 was an implementation of the policy regarding the release of information, as set out in its employee handbook, and that even if the directive was a change in pol-

icy, it was not material, substantial, and significant. I find that the Hospital's failure to notify the Union and afford it an opportunity to bargain about the contents of the quoted directive of July 30, prior to its issuance, did not violate Section 8(a)(5) and (1) of the Act for the following reasons.

I find that in dealing with employee requests for information, neither Severin nor Harshyne have relied on the Hospital's quoted policy regarding release of information. Nor was there any reference in the directive of July 30 to that policy.¹⁷ Instead, I find that prior to July 30, the Hospital maintained an unwritten policy, which permitted Severin to use his discretion in dealing with employee requests, and to delegate his authority to Harshyne for routine requests. Since July 30, the Hospital has required that employee requests be in writing and that they be addressed to Vice President Paccapaniccia instead of Severin and Harshyne. In its directive announcing this procedure which substantially differs from that quoted above, the Hospital's president and CEO made no reference to the employee handbook provision, which I find to be directed only to release of information to the public.

However, contrary to the General Counsel's contention, I find that the Hospital's decision to require employee requests for information to be written, and addressed to Vice President Paccapaniccia did not entitle the Union to notice and an opportunity to bargain. In her effort to find support for her position, counsel for the General Counsel relies on cases in which the unilateral changes consisted of stricter enforcement of rules regarding conditions of employment, such as elimination of washup time, elimination of telephone privileges, enforcement of a rule prohibiting the use of a dock area for breaks, a more stringent tardiness policy,18 a change in an employer's lunchbreak policy,19 or stricter enforcement of work rules.²⁰ Counsel for the General Counsel asks me to view this change, along with the other unilateral changes which the Hospital made in violation of its duty to bargain, as a totality impacting on the unit employees' environment. However, in the two cases she cited in support of her position, the employer's unlawful changes had to do with access to the plant before the start of the workday and other rules impacting directly on the unit employees' conduct in the course of their work.21

¹⁷ According to Vice President Paccapaniccia, the Hospital issued the directive of July 30 because an employee, David Smith, had released information to a state DER agent, in disregard of the employee handbook policy. Thus, if I credited Paccapaniccia, the directive was an amplification of the handbook policy statement. However, when asked to explain the 3-month gap between the DER's visit to the Hospital and the issuance of the directive, Paccapaniccia was not responsive. Instead, he speculated as to what probably provoked issuance of the directive. This flaw in his testimony cast doubt on the reliability of his testimony regarding the relationship between the directive and the policy contained in the employee handbook. In any event, from my reading of the handbook policy and the directive, I have concluded that each is aimed at a different problem. The handbook policy is concerned with public relations and the directive of July 30 was aimed at release of information to the Hospital's employees.

¹⁸ Advertiser's Mfg. Co., 280 NLRB 1185, 1189-1199 (1986).

¹⁹ Larsen Supply Co., 251 NLRB 1642 (1980).

²⁰ Allis-Chalmers Corp., 234 NLRB 350, 354 (1978).

²¹ RAHCO, Inc., 265 NLRB 235, 250–252 (1982); Bralco Metals, 214 NLRB 143, 149 fn. 9 (1974).

Here, I find no showing that the Hospital's directive of July 30 had any effect on the bargaining unit employees' wages, hours, or conditions of employment. The directive did not have any effect on the maintenance employees' work environment. Nor did it establish any rules limiting the kinds of information which the employees would have access to. Instead it channeled employee requests for information to a specified hospital official and required that all such requests be in writing. I find that these changes in procedure did not effect the bargaining unit employees' wages, hours, or conditions of employment. I further find that the Hospital did not violate Section 8(a)(5) and (1) of the Act by promulgating and implementing its directive of July 30, regarding release of information to employees, without giving the Union prior notice and an opportunity to bargain about it. San Antonio Portland Cement Co., 277 NLRB at 314.

I. The Refusal to Furnish Information to the Union

At the end of July, David Smith asked Dan Severin for a copy of the report which Comprehensive Safety Compliance, Inc. had prepared concerning the engineering and maintenance department. Severin responded by giving an ash report which had been prepared by another firm from Latrobe, Pennsylvania. Smith rejected the proffered report and insisted on receiving a report prepared by Comprehensive Safety Compliance, Inc. regarding the engineering and maintenance department. By this time, Severin had provided Smith with a Comprehensive Safety report analyzing the airborne lead and arsenic content in the powerhouse, which the Hospital had received on June 23. However, Severin had another report which Comprehensive Safety had prepared for the Hospital, regarding its industrial safety and hygiene, which were matters of concern for the engineering and maintenance department. Severin did not offer this report to Smith. Instead, Severin said he was reviewing the requested report and would get back to Smith.22

Smith waited about 1 week for word from Severin. Hearing nothing from him, Smith approached Severin again about the Comprehensive Safety report concerning the engineering and maintenance department. Severin informed Smith that his request would have to be in writing. Whereupon, Smith made a written request for "the report that was given to the Hospital concerning the Eng & Maintenance Dept that Comprehension Safety Co prepared." Smith signed the request as "David Smith." I find from Severin's testimony, that he understood Smith's request to be for a second report, which Comprehensive Safety Compliance, Inc. had made, regarding the entire hospital's industrial safety and hygiene. Severin passed Smith's request to Vice President Paccapaniccia.

By letter dated August 17, Paccapaniccia refused to provide the report requested by Smith, on the ground that it was

confidential. Later in August, Smith told Severin that he was upset by the Hospital's refusal to furnish the report. Smith said he did not want the entire hospital report, only the part covering the maintenance department. Severin replied that Smith would not receive the report, adding that Smith was "on a fishing expedition."

Smith made a second written request which met rejection. In a letter dated October 12, Smith again asked for "the Comprehensive Safety Report concerning the Engineering and Maintenance department." He signed the letter as the Union's engineering and maintenance shop steward.

Vice President Paccapanicca replied, by memorandum dated October 30, that as the Hospital was seeking court review of the Board's certification of the Union, Smith's request, as shop steward, was denied. The Hospital has never provided the Union with the report which Smith requested in his letter of October 12.

Counsel for the General Counsel contends that the Hospital's refusals to provide the information which David Smith requested in August and October violated Section 8(a)(5) and (1) of the Act. The Hospital argues that its refusals to supply the requested information to the Union were lawful. First, the Hospital asserts that there was only one Comprehensive Safety Compliance report, which concerned the maintenance department, and Severin gave it to Smith. Further, according to the Hospital, Smith was not interested in the Comprehensive Safety Compliance's second report, which covered the entire hospital. The Hospital contends that in any event, the second report, did not concern the bargaining unit employees, and Smith never explained its relevance to the Union's role as the maintenance employees' bargaining representative.

Contrary to the Hospital, I find there were two Comprehensive Safety Compliance reports which concerned the maintenance and engineering department. The first of these covered airborne inorganic lead and arsenic concentrations in the Hospital's powerhouse. Severin gave this report to David Smith. The second report covered the industrial safety and hygiene in the Hospital's entire facility, matters which Severin admitted were of concern to his department. After receiving Paccapaniccia's letter of August 17, rejecting his request for the second report, Smith told Severin he "only wanted the report concerning our department." Smith had expressed the same objective in his first written request, dated August 7, and he repeated it in his second written request on October 12. Smith also testified that he "didn't want the whole hospital report." I find from Smith's remarks, and his testimony, that he was seeking whatever there might have been in the second report which touched on the concerns of the maintenance and engineering department. The remaining question is whether the Act required the Hospital to satisfy Smith's requests.

At the time Smith made his first request for the second report, the Union had been selected as the collective-bargaining representative of the bargaining unit, which comprised Severin's maintenance and engineering department. When Smith made his second request as the Union's shop steward for the bargaining unit, the Board had certified the Union as the bargaining representative of that same unit. In June, Smith had revealed his appointment as the Union's shop steward to Severin. Thus, I find that when Smith asked him for the second report, in late July and early August, Severin

²²I based my findings regarding Smith's requests and Severin's responses on Smith's uncontradicted testimony. I relied on Severin's testimony in finding that he understood that Smith was asking for a report by Comprehensive Safety Compliance, Inc. which covered the Hospital's hygiene and safety. Smith testified that when he rejected the Latrobe laboratory's ash report, he told Severin that he wanted the ash report which Comprehensive Safety had made. However, I have not credited this portion of Smith's testimony. Instead, I have credited both Kathie Harshyne, who distinctly remembered giving that report to Smith, and Severin, who testified that he had given that report to Smith after receiving it on June 23.

was on notice that Smith was doing so on the Union's behalf. Yet, there is no direct evidence showing that Paccapaniccia was apprised of Smith's status in August, when Smith made his first written request for the second report. However, I need not delve into whether circumstantial evidence would support an inference that Paccapaniccia knew of Smith's status at that time. For I find that in October, Smith showed that he was acting for the Union, when he made his second written request to Vice President Paccapaniccia, and signed off on it as the Union's shop steward

When Paccapaniccia received Smith's second written request, the Hospital had a general obligation to provide information which was needed by the Union "for the proper performance of its duties." *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). The standard for determining the relevance of requested information is a liberal one and it is necessary only to establish "the probability that the desired information is relevant and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, supra at 437. Accord: *Pony Express Courier Co.*, 286 NLRB 1286, 1288 (1987).

As the Board held in *American National Can Co.*, 293 NLRB 901, 904 (1989):

The health and safety of employees are terms and conditions of employment, and thus mandatory subjects of bargaining about which an employer is obligated to bargain with the collective-bargaining representative of its employees. [Citation omitted.]

Thus acquisition of the industrial safety and hygiene information in the second report, to the extent it concerned the engineering and maintenance department, was clearly relevant to and necessary for the Union's proper performance of its general collective-bargaining responsibilities to assure the Hospital's compliance with state and Federal regulations and thus protect the health and safety of the bargaining unit employees. These concerns may be the subjects of negotiations leading up to the execution of a collective-bargaining agreement, or they may be taken up as grievances raised by the Union even without a collective-bargaining agreement.

A further basis for the Union's request for the second report is the engineering and maintenance department's responsibility for the Hospital's industrial safety and hygiene. Thus matters discussed in the second report, dealing with those concerns, were likely to impact on the unit employees' duties and work assignments, which are mandatory subjects of collective bargaining. *Alamo Cement Co.*, 277 NLRB 320, 323–324 (1985). Here again, the information contained in the second report was clearly relevant to and necessary to the Union's proper performance of its collective-bargaining responsibilities to the bargaining unit employees.

In sum, I find that the Hospital violated its collective-bargaining obligation under the Act, when it refused to furnish the second Comprehensive Report to David Smith, on October 30. Accordingly, I find that by that refusal the Hospital violated Section 8(a)(5) and (1) of the Act. *Curtiss-Wright Corp.*, 347 F.2d 61, 68 (3d Cir. 1965); *Ohio Power Co.*, 216 NLRB 987, 995 (1975).

CONCLUSIONS OF LAW

- 1. The Respondent, Indiana Hospital, a wholly owned subsidiary of Indiana Health Care Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- 2. The Union, International Union of Operating Engineers, Local 95-95A, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. By issuing an evaluation to its employee David Smith, criticizing his attitude and performance because he supported the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
- 4. By issuing a verbal written warning to David Smith because he supported the Union, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.
- 5. By prohibiting its maintenance employees from taking lunch and breaks in the powerhouse and by changing the work schedules of its employees Charles P. Huston and Thomas G. Shaffer Sr., because they supported the Union, the Respondent violated Section 8(a)(3) and (1) of the Act.
- 6. At all times since September 19, 1991, the Union has been, and continues to be, the exclusive representative of Respondent's employees in the following bargaining unit found appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:
 - All full-time and regular part-time skilled maintenance employees, including, biomedical technicians, operating engineers, lead operating engineer, carpenters, electricians, painters, plumbers, HVAC mechanics, maintenance mechanics, preventive maintenance employees, lead grounds-keeper, parts room clerk and engineering and maintenance department secretary employed by the Employer at its facility located in Indiana, Pennsylvania; excluding all business office clerical employees, all technical employees and guards, professional employees and supervisor as defined in the Act, and all other employees.
- 7. By unilaterally changing the wages, hours, and other terms and conditions of employment of its bargaining unit employees by changing its policy regarding snow removal, changing the work schedules of its maintenance employees, changing the work schedules of its employees Charles P. Huston and Thomas G. Shaffer Sr., prohibiting its employees from taking lunch and breaks in the powerhouse, and by failing and refusing to furnish the Union with the information requested by it in writing on October 12, 1992, the Respondent has violated Section 8(a)(5) and (1) of the Act.
- 8. The unfair labor practices found above affect commerce within the meaning of Section 2(6) and (7) of the Act.
- 9. The Respondent has not violated Section 8(a)(3) and (1) of the Act by changing the work schedules of its maintenance employees.
- 10. The Respondent has not violated Section 8(a)(5) and (1) of the Act by changing the job description of the position of lead groundskeeper.
- 11. The Respondent has not violated Section 8(a)(5) and (1) of the Act by changing its policy regarding the submission of requests for information.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Respondent be required to remove the critical comments from the evaluation which it issued to David Smith on June 23, 1992, which I have found violative of the Act, and notify him, in writing, that it has done so and that it will not use these critical comments against him in any way.

I shall also recommend that the Respondent be required to remove from its files any reference to the verbal written warning it issued to David Smith on September 3, 1992, which I have found violative of the Act, and notify him in writing, that it has done so and that it will not use the warning against him in any way.

Having found that the Respondent has unilaterally changed its maintenance employees' work schedules, I shall recommend that the Respondent be required to restore their work schedules to the status quo before those changes were made, by discontinuing the assignment of general maintenance mechanics to the night shift on weekends. Having found that the Respondent unilaterally discontinued its practice of allowing maintenance employees to take lunch and breaks in the powerhouse, I shall recommend that the Respondent be required to resume that practice. Having found that the Respondent unilaterally changed its policy regarding the assignment of snow removal duties, when no employees volunteer to perform such duties, I shall recommend that the Respondent be required to rescind those changes, which it added to its written policy in November 1992.

Having found that on, and since October 30, 1992, the Respondent has unlawfully refused to furnish to the International Union of Operating Engineers, Local 95-95A, AFL—CIO a report prepared by Comprehensive Safety Compliance, Inc. covering the Hospital's industrial safety and hygiene, I shall recommend that the Respondent be required to furnish that report to Local 95-95A on request.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²³

ORDER

The Respondent, Indiana Hospital, a wholly owned subsidiary of Indiana Health Care Corporation, Indiana, Pennsylvania, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Discouraging membership in or support for the Union, International Union of Operating Engineers, Local 95-95A, AFL–CIO or any other labor organization by discriminating against employees on their performance evaluations, or by disciplining employees or by changing their work schedules or by prohibiting them from taking lunch and breaks in the powerhouse or by otherwise discriminating against them in any manner with respect to their hire, tenure of employment, or terms and conditions of employment, because of their union membership, sympathies, or activities.

- (b) Refusing to bargain in good faith with the Union as the exclusive representative of its employees with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, in an appropriate unit consisting of:
 - All full-time and regular part-time skilled maintenance employees, including, biomedical technicians, operating engineers, lead operating engineer, carpenters, electricians, painters, plumbers, HVAC mechanics, maintenance mechanics, preventive maintenance employees, lead grounds-keeper, parts room clerk and engineering and maintenance department secretary employed by the Respondent at its facility located in Indiana, Pennsylvania; excluding all business office clerical employees, all technical employees and guards, professional employees and supervisor as defined in the Act, and all other employees.
- (c) Making unilateral changes in the hours of employment, the policy regarding use of the powerhouse for taking lunch and breaks, the policy regarding assignment of snow removal duties, or in other terms of conditions of employment covering bargaining unit employees, without prior notice to, or bargaining with, the Union, as the exclusive representative of the bargaining unit described above.
- (d) Refusing to furnish to the Union the information which it requested in its letter of October 12, 1992, and such other information as the Union may request, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining representative of the bargaining unit described above.
- (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Remove the critical comments from the evaluation which it issued to David Smith on June 23, 1992, and notify him, in writing, that it has done so and that it will not use these critical comments against him in any way.
- (b) Remove from its files any reference to the verbal written warning it issued to David Smith on September 3, 1992, and notify him in writing, that it has done so and that it will not use the warning against him in any way.
- (c) Notify and give the Union an opportunity to bargain about any changes in the unit employees' terms and conditions of employment, including the changes in the work schedules of the maintenance employees, the change in the policy regarding lunch and breaks in the powerhouse, and the change in the policy regarding the assignment of snow removal duties.
- (d) On the Union's request, rescind the changes in the maintenance employees' work schedules which were effective in early June 1992.
- (e) On the Union's request, rescind the prohibition against taking lunch and breaks in the powerhouse, which was effective on June 5, 1992, and restore the policy which permitted such use of the powerhouse by bargaining unit employees.
- (f) On the Union's request, rescind the policy changes regarding the assignment of snow removal duties, which became effective in November 1992, and restore the policy which had been in effect immediately prior to those changes.

²³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- (g) On request, furnish to the Union, in writing, all of the information requested in its letter to the Respondent, dated October 12, 1992.
- (h) Post at its office in Indiana, Pennsylvania, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- (i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discourage membership in or support for the Union, International Union of Operating Engineers, Local 95-95A, AFL–CIO or any other labor organization by discriminating against David Smith or any other employees on their performance evaluation, or by disciplining them or by changing the work schedules of Charles P. Huston and Thomas G. Shaffer Sr. or any other employees, or by prohibiting our employees from taking lunch and breaks in the powerhouse or by otherwise discriminating against them in any manner with respect to their hire, tenure of employment, or terms and conditions of employment, or terms and conditions of employment because of their union membership, sympathies or activities.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive representative of its employees with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, in an appropriate unit consisting of:

All full-time and regular part-time skilled maintenance employees, including, biomedical technicians, operating engineers, lead operating engineer, carpenters, electricians, painters, plumbers, HVAC mechanics, maintenance mechanics, preventive maintenance employees, lead grounds-keeper, parts room clerk and engineering and maintenance department secretary employed by In-

diana Hospital at its facility located in Indiana, Pennsylvania; excluding all business office clerical employees, all technical employees and guards, professional employees and supervisor as defined in the Act, and all other employees.

WE WILL NOT make unilateral changes in the hours of employment, the policy regarding use of the powerhouse for taking lunch and breaks, the policy regarding assignment of snow removal duties, or in other terms of conditions of employment covering our bargaining unit employees, without prior notice to, or bargaining with, the Union, as the exclusive representative of the bargaining unit described above.

WE WILL NOT refuse to furnish to the Union the information which it requested in its letter of October 12, 1992, and such other information as the Union may request, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining representative of the bargaining unit described above.

WE WILL NOT in any like or related manner interfere with, restrain, or coercing you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remove the critical comments from the evaluation which we issued to David Smith on June 23, 1992, and notify him, in writing, that we have done so and that we will not use these critical comments against him in any way.

WE WILL remove from our files any reference to the verbal written warning we issued to David Smith on September 3, 1992, and notify him in writing, that we have done so and that we will not use the warning against him in any

WE WILL notify and give the Union an opportunity to bargain about any changes in the unit employees' terms and conditions of employment, including the changes in the work schedules of the maintenance employees, the change in the policy regarding lunch and breaks in the powerhouse, and the change in the policy regarding the assignment of snow removal duties.

WE WILL, on the Union's request, rescind the changes in the maintenance employees' work schedules which were effective in early June 1992.

WE WILL, on the Union's request, rescind the prohibition against taking lunch and breaks in the powerhouse, which was effective on June 5, 1992, and restore the policy which permitted such use of the powerhouse by bargaining unit employees.

WE WILL, on the Union's request, rescind the policy changes regarding the assignment of snow removal duties, which became effective in November 1992, and restore the policy which had been in effect immediately prior to those changes.

WE WILL, on request, furnish to the Union, in writing, all of the information requested in its letter to us, dated October 12, 1992.

Indiana Hospital, a wholly owned subsidiary of Indiana Health Care Corporation

²⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."